DIRECT PRIMARIES IN MISSOURI

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Missourians have been conservative in their political ideas, and have been slow to adopt innovations in their political institutions The first Constitution of 1820 incorporated those political ideas and institutions which had been tested by the older states, and excluded the new democratic doctrines of popular election and rotation in office, which were being agitated, and were just beginning to secure recognition in some of the states. The heads of the state administrative departments did not become elective until 1851, while the judiciary held during good behavior until 1849, and were not chosen by popular election until 1851. While the system of voting by ballot was introduced during the Territorial Period, it was abandoned in 1822 in favor of the viva voce system, which continued to be the general method until 1863, though the ballot system had been introduced in a number of counties by special acts beginning in 1845. Even to this day there is retained the provision for numbering a ballot to correspond with the number opposite the name of the voter in the poll book, so that it is impossible to have perfect secrecy of the ballot.

More recently this political conservatism appears to have become weakened, and we find Missouri among those states which have tested two important governmental experiments—the Compulsory Direct Primary, and the Initiative and Referendum. It is the purpose of this paper to indicate the origin and essential features of the Direct Primary in Missouri, and to discuss some of the questions which have arisen from its adoption.

The Direct Primary, as a system of making party nominations has existed in Missouri for a long time, but, until recently it was optional in character, and its use was limited to the selection of candidates who where to be elected wholly within a city, county, or congressional district. As early as 1875 a Direct Primary Law was

enacted for St. Louis County. It was optional in character and left most matters to be regulated by party officials. Judges and clerks were required to conduct the election under regulations similar to those obtaining in regular elections, and penalties were prescribed for bribery and illegal voting. It was expressly provided that none of the expenses of such elections should fall upon the County or State. General statutory definition of the Direct Primary came in 1889, when the introduction of the Australian Ballot System made it necessary for the state to regulate in some degree the method of nominating candidates for public office. Before that date aside from the Act pertaining to St. Louis County, there had been no legal recognition or regulation of political parties, or their activities. At that time in addition to the convention of delegates and petition by voters, the Direct Primary was officially recognized as a proper method of nominating candidates for state, district, county, and other local offices.

This optional primary election law of 1889 was quite limited in its scope, the control of the election being left almost entirely to the political party. The statutory provisions were restricted to those necessary to secure certification of the nominees to the Secretary of State or County Clerk, and to punish illegal voting and fraudulent returns. The time and place of the election, the election officials, the qualifications of voters, and of candidates, the counting and canvassing of the votes, and the determination of the results were all left to the decision of the officials of the political party concerned.

Two years later a more comprehensive optional law was enacted, its application, however, being limited to the city of St. Louis, and to political parties which cast one-fourth of the total vote at the preceding general election. Under this Act the recorder of voters was given powers regarding notice of the election, polling places, selection of officials, printing and distribution of ballots and poll-books, and the certification of successful candidates. Candidates were required to pay fees which were used in defraying the expenses of the election. The provisions of this Act were made to apply to Kansas City in 1893.

In 1899, under a new statute enacted for St. Louis, the state appointed board of election commissioners took the place of the recorder of voters. It was also made a misdemeanor for a person to vote or offer to vote without being a member of the political party holding the primary, or after having voted at the primary of the opposite

party held for the same purpose. The law was again revised in 1901, the most important change being a provision for the registration of voters for primary purposes. In the same year Kansas City came under the operation of a new law enacted for counties having 175,000 population. This Act, so far as it applied to Kansas City, gave considerable power to the Board of Election Commissioners appointed by the Governor.

Despite the existence of the general optional law for primary elections, the Direct Primary was confined to the nomination of candidates for local and district offices, and its use for this purpose was far from universal. The party leaders preferred the convention system of nomination, which made possible the selection of a stronger ticket through a territorial distribution of the candidates. They looked with disfavor upon the Direct Primary, because of the bitter animosities developed among different leaders and factions of the party.

The people, however, began to manifest their dissatisfaction with the convention system. While the latter was governed by statutory regulation, it did not harmonize with the movement for direct participation of the people which was gaining in strength and led to the adoption of the Initiative and Referendum in 1908. It was believed that the convention lent itself to the schemes of the political boss and machine, and revelations of official corruption intensified the popular discontent with existing political conditions.

The first steps looking to a general state primary were taken during the gubernatorial campaign of 1904. Public opinion had been considerably aroused during the preceding year, as a result of the disclosures of bribery and corruption in the municipal assembly of St. Louis and the General Assembly of the State. Joseph W. Folk who, as Circuit Attorney of St. Louis had taken an active part in exposing and prosecuting the guilty parties, was a candidate for the Democratic nomination for the office of Governor. As his candidacy was not favored by the leaders of the regular party organization, his supporters appealed directly to the people and insisted that the voters in each county should be given an opportunity of expressing their choice, which should be binding upon the delegates to the State Convention. This plan met with widespread approval, and, despite the opposition of the party leaders, was adopted in a large number of counties, and resulted in the instruction of a sufficient number of delegates to give the nomination to Mr. Folk. Moreover, the State Convention, which nominated him, included in its party platform a

demand for the enactment of a general primary election law. Mr. Folk, who was practically nominated by direct primary, was the only candidate on the Democratic State ticket elected—a fact which could not fail to impress party supporters. The two houses of the General Assembly, which met in 1905, differed in political complexion, and this probably explains the failure to enact a primary election law at that session. In 1907, however, the reform forces were successful in passing a law for a general compulsory direct primary.

This act has introduced revolutionary changes in the system of nominating candidates for public offices. It applies to the nomination of candidates for all offices to be filled at the November election except candidates for the position of presidential electors. It substitutes statutory regulations for the rules of the political party, which formerly governed this matter, and provides for the administration and supervision of public officials instead of party committees. It does not seek to abolish political parties, but on the contrary, brings them within the scope of legal definition and gives them official recognition. In 1909, after one primary election had been held under the law, the legislature revised the entire act, introducing some significant changes which will be indicated in the discussion of the features of the system.

The law provides that the primary elections of all political parties shall be held on the same day, which is fixed for the first Tuesday in August preceding a general election, and that the polling places shall be the same as those used in general elections. Originally, in order to have his name placed upon the ballot, it was necessary for the candidate to file nomination papers signed by a certain percentage of the voters of his party, the number necessary varying from 1 per cent to 3 per cent according to the district from which the candidate was to be chosen. The only exception to this rule was in the case of candidates for county offices, who were required to file a declaration. The labor and expense connected with securing the signatures proved so great that in the law of 1909 these provisions were omitted, and it was provided that any person could have his name placed upon the ballot as a candidate by filing a declaration and paying a certain sum to the committee of his party to be used in meeting the expenses of the party. This fee varies from $5 for county offices to $100 for state offices, and is intended to restrict the number of candidates to those who are in good faith seeking the office. Provision is made for the

nomination of candidates who do not belong to any political party, the fees in such cases going into the state treasury.

The ballots used in the primary election are prepared by public officials and are printed and distributed at public expense. There are separate ballots for each political party and one for non-partisan candidates. Fusion of parties is prevented by the provision that no candidate's name can appear on the ballot of more than one party. Moreover, if a voter write upon his ballot the name of a person who is a candidate for the same office upon some other ballot, such vote will not be counted.

The original law of 1907 provided that upon each ballot the name of the candidates should be arranged alphabetically, according to surname, under the title of the respective offices. In the election of 1908 it was observed that candidates whose names appeared at the head of the ticket had a great advantage on account of the tendency among indiscriminating voters to vote for the first name on the list, at least in the case of minor offices. It was significant that while there were a number of candidates for some of the offices, there was not a single instance in any of the primaries for state offices in which the candidate whose name appeared first upon the list ranked lower than second in the contest. Hence, the demand was made for a change, and the law of 1909 provides that in the city of St. Louis and in all counties containing cities of 100,000 inhabitants, the names shall be so alternated on the ballots that each name shall appear an equal number of times at the top, bottom, and each intermediate place in the list of candidates for any office. The restriction of this provision to the more densely populated districts was due to the fact that the lack of discrimination appeared to be greatest in those districts. In the election of 1910, however, there was considerable evidence of the existence of a similar situation in the other sections of the state. For example, a candidate for railroad commissioner on the democratic ticket whose name appeared first on the ballot received a large vote in practically every county, though he was not known outside of St. Louis and had made no canvass for the position.

Another important difference between the laws of 1907 and 1909 is to be found in the provision regulating the right of the voter to select the party primary in which he desired to vote. Under the optional primary election law this had been left entirely to party

officials. The law of 1907 gave the elector perfect freedom in this respect. This provision aroused considerable party opposition, as it made it possible for voters of one party to vote in the primary of another party and thereby nominate a candidate who might weaken the party ticket. The fact that in the primary election of 1908 there was no contest in one of the leading parties for the nonination for five principal state offices made this possibility all the more evident. As a result the legislation of 1909 undertook to restrict a voter to the primary of the party with which he is known to affiliate. The right to change party affiliations, however, is recognized in the provision that the voter when challenged on this point shall, nevertheless, be permitted to vote provided he takes an oath or affirmation to support the party nominees at the next general election.

The law recognizes the right of each party to be represented by challengers during the casting of the vote, and by the chairman of the county committee, or his agent, during the canvass and return of the vote. The judges and clerks of the primary, however, are provided in the same manner as at general elections. The statutes regarding the holding of elections, solicitation of voters at the polls, challenging of voters, etc., are made to apply to primaries so far as possible, it being the declared intent of the act "to place primary elections under the general regulation and protection of the laws now in force as to general elections."

Not the least significant of the provisions of the law are those affecting party organization. The necessity for a legal definition arose partly as a result of the legal recognition of the party and partly because the establishment of the primary did away with the usual method of establishing party organization through mass meetings and conventions. The original law provided that at the primary election the voters could elect one committeeman from each ward or township. The ward and township committeemen make up the county committee of their party. Under the previous system of party regulation the county committee was based generally upon township representation, being either equal or proportional to the party vote cast by the respective townships. The provision of the primary law caused great dissatisfaction, because of the increased representation given to incorporated cities and to townships which cast only a small percentage of the party vote. The Act of 1909 amended the provision so as to enable the party committee to increase the number to two from each ward or township, but as this did not affect

the question of relative representation, there is still a strong demand for the amendment of this provision.

The chairman elected by the county committee is ex-officio a member of the judicial, senatorial, and congressional committees of the district of which his county is a part. Each congressional committee elects two members of the state committee. These members of the state committee meet at the State capitol on the second Tuesday in September and organize by electing a chairman and other officers.

The desirability of a party platform is also recognized, provision being made for a state convention of each party to meet immediately after the organization of the state committee. This convention is composed of the members of the state committee, and party nominees for state officers, representatives in Congress, and state senators and representatives. The platform is to be published not later than 6 p.m. of the following day. A convention may also be called by the state committee for the purpose of nominating presidential electors, electing delegates to national conventions, and members of national committees, but questions relating to state offices and policies may be dealt with only as provided in the primary law.

At the same session at which the first compulsory primary law was enacted there was also passed a law providing for a primary election for the nomination of candidates for United States Senator. This law is significant not only of the attempt to control party nominations, but as part of the general movement to secure direct election of United States Senators. Missouri is one of the states which has called upon Congress to convene a constitutional convention for the purpose of amending the constitution of the United States with regard to this matter.

Under the senatorial primary law any person may become a candidate for nomination by filing his application with the Secretary of State. This primary is held at the same time as the general election next preceding the vacancy in the office. The names of the candidates of each party are to be printed upon the ballot of such party. While a voter may write in a name not appearing upon the ballot, he cannot vote on one ticket for a candidate whose name is printed upon another ticket. The law declares that the person receiving the highest number of votes upon each party ticket shall be the caucus nominee of such party and all members of said party in the legislature shall vote for said nominee. While this provision is not binding upon the members of the legislature, it was observed in 1909 and will doubtless be followed in 1911.

The direct primary for state purposes has had only two trials in Missouri. In 1908 it was used for the nomination of candidates for eight state offices, while in 1910 only three state positions were to be filled. In both years candidates for United States Senator were nominated. While the system has not had sufficient trial in this state to justify definite conclusions respecting its operation, it is possible to indicate certain tendencies which have been manifested.

The first direct primary in 1908 appeared to justify the fears of party leaders regarding the effect of the bitterness developed in such contests. In the Democratic party the campaign for the nomination for governor aroused considerable feeling among supporters of the different candidates. The result was close and led to charges of fraud by one of the defeated candidates. While other causes may have affected the situation, this condition appears to have been chiefly responsible for the defeat of the Democratic nominee for governor, who ran considerably behind the rest of his ticket. The influence of the primary election upon this result was emphasized by the fact that there had been no contest in the Republican primary for the principal offices and no bitterness had developed among members of that party.

On the other hand the belief on the part of many that the direct primary would weaken party organization and eliminate political "bossism", has not been borne out by the facts in this state. In the primaries of both parties evidence of the existence of "slates" has appeared. In the Republican primary of 1908 there were contests for only two of the seven administrative offices, and it was charged by the opposition that this was due to a "slate" agreed upon in advance of the primary. The truth appears to be that the party, having by unanimous demand forced the candidate for governor into the contest, was willing to follow his preference in the matter of the other offices, and that knowledge of this fact caused most of the other aspirants to refrain from entering the contest.

It is clear that where contests for the nomination have existed, the candidate favored by the party organization has generally been successful. This tendency has been especially marked in the large cities. In the St. Louis primaries of last August the "slate" of one party was broken in only two cases, while in the other party only one candidate was nominated without the approval of the organization.

In one respect the system has strengthened the parties by practically eliminating all opportunity for an independent ticket or can-

didate. It is true that the law makes provision for the nomination of independent candidates at the same time that other candidates are nominated. But a real independent ticket, nominated as a protest against machine rule, will not be possible, as the necessity for it will not be known until after the nominations of the regular parties have been made. On the other hand, the political party committee can fill vacancies, not only those occurring after the primary, but also where they are due to the failure of any person to offer himself as a candidate.

An interpretation of this provision was made necessary by the fact that a person who received a few votes, where no one had offered himself as a candidate, claimed to be the party nominee. The attorney-general ruled against this claim and held that a vacancy existed which could be filled by the party committee. A more interesting case grew out of the withdrawal of the name of a candidate who had no opposition for the nomination. The name was withdrawn a short period before the expiration of the time for filing a declaration of candidacy and was made known to only one person, who promptly filed his declaration. When the matter became public, considerable feeling was aroused, and led to the announcement of another candidate. While the name of the latter could not be printed on the ballot, the attorney-general ruled that it could be written in, and, as a result, he secured the nomination and election.

While the direct nomination system has not weakened the party organization nor lessened the influence of the professional politician, it is not regarded with favor by most party men. The writer has recently interviewed and corresponded with a number of men in each party, representing all classes from the ward politician to the party leader, and including some who favored the enactment of the law. Surprising unanimity appears in the expression of unfavorable opinions regarding the operation of the system. Among the chief objections urged may be mentioned the great expense, the opportunity afforded the demagogue, the unintelligent character of voting on candidates for minor state offices, the lowering of the standard of candidates, as a result of the above causes, the inclusion of nominations for judicial offices, the nomination of minority candidates, and the nomination of candidates for United States Senator at the same time as the general election.

While the expense of the system, so far as the candidates are concerned, has been reduced by the elimination of the provision for nom-

ination papers with signatures, a considerable burden still remains. The great expense connected with the canvass of a large state, including 114 counties in addition to the city of St. Louis, practically prohibits a man with limited means from becoming a candidate for a state office. Criticisms of the expense falling upon the state and county are not of much weight if improvement results from the adoption of the system.

As indicated above, evidence of unintelligent voting exists. While the effect of this can be somewhat equalized, it cannot be overcome by abandoning the alphabetical arrangement of the names on the ballot. The candidate with a special aptitude for campaigning has been shown to have a great advantage. It is clear, moreover, that large numbers of the voters have no personal acquaintance with nor information regarding any candidates for state offices except that of governor. Specific evidence of this is afforded by the fact that in 1908 the total vote for the minor offices which were contested was 7 per cent behind the vote for Governor in the Democratic primary, while in the case of the Republicans the loss reached 15 per cent.

There is little evidence, however, that the above causes have tended as yet to lower the standard of candidates for State offices. It is noteworthy, however, that during the present year in the case of two vacancies, one upon the Supreme Court and the other upon the St. Louis Court of Appeals, the number of well qualified candidates whose names were submitted to the state and district committees respectively, was much larger than in the case of the direct primary which had been held earlier in August. This emphasizes the argument that judicial offices should not have been brought under the direct primary, a fact which is further strengthened by the existence of inadequate salaries for judges.

Minority candidates have been nominated by both parties, the proportion of the total vote received by nominees for state offices for which there were more than two candidates, varying from 26 per cent to 34 per cent in the Democratic primary. In the Republican primary, where not more than three candidates contested for any nomination, the figures were 40 per cent and 42 per cent.

It is certain that in large cities corrupt politicians have profited by the existence of a number of candidates. In some cases the number has been artificially increased under the skillful manipulation of the boss. In Buchanan County, in which the city of St. Joseph is located, there were in the primary of 1908 fourteen candidates for

the office of sheriff. The successful candidate was a saloon keeper, who, according to a correspondent, was opposed by all the newspapers and by the best element in the party. He received only 21 per cent of the primary vote and only 45 votes more than his nearest opponent, but this was sufficient for his nomination and he was duly elected to the office.

The direct primary for United States Senator was placed on the same date as the general election for the purpose of getting out the party vote. Some objection has been raised to this plan on the ground that the voters should know who the nominees are before voting for members of the General Assembly. Another criticism has come from the smaller counties which do not have under this system as much weight in determining the results, as is secured to them under the basis of representation in the House of Representatives, which discriminates against the larger counties. For example, the city of St. Louis, which casts one-fifth of the total vote has only one-ninth of the members of the House of Representatives.

It has been observed that the vote in the senatorial primary is much smaller than the vote for candidates for election. This is not due entirely to lack of interest in the primary, but results also from the fact that where there are more than two candidates for nomination, frequently only one name is erased, and, hence, the ballot is not counted. In both senatorial primaries of both parties there have been two prominent candidates in addition to one or more minor candidates, and the tendency on the part of many voters was to scratch only the name of the chief opponent of his candidate.

At the present writing it appears probable that the direct primary law will be profoundly modified at the session of the General Assembly, which will convene next month. The sentiment is quite strong for the substitution of a convention of delegates elected by direct primary for the present method of nominating minor state officials. The indications are that the compulsory direct primary will be retained for the office of governor and congressmen, while for local offices the matter will be left optional with the party committee.

While their experience with the direct primary has disappointed the anticipations of the majority of voters, they retain the impression of its possibilities as a means of controlling or overthrowing a party organization. One of my correspondents, who describes himself as a ward politician, and points out the defects of the direct primary, admits that "if the time ever came when the people were thoroughly

aroused on any single candidate, the direct primary gives a power which they do not possess under any other form of nomination." Whatever action may be taken by the present legislature, it is certain that public regulation of parties will not be abandoned, and means will be preserved by which the people will be able to resort to the direct primary, when the demand for it arises.